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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADAM WEISBLATT, JOE HANNA, and
DAVID TURK, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

APPLE INC., AT&T INC., AT&T
MOBILITY LLC, and Does 1-10,

Defendants.

Case No. CV 10-02553 PVT

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Upon personal knowledge as to their own acts and status, and based upon their investigation, their counsel's investigation and information and belief as to all other matters, Plaintiffs Adam Weisblatt, Joe Hanna, and David Turk ("Plaintiffs"), on behalf of themselves and all others similarly situated, allege as follows:

NATURE OF THE ACTION

1. This is a class action brought by consumers who were baited into purchases of 3G-enabled Apple iPads with promises of flexible "unlimited" data plans, only to have that promise reneged upon within weeks of their purchases.

1 2. An iPad is a wireless computer marketed and used for downloading and storing
2 large amounts of multi-media data and applications, viewing and listening to video, movies, and
3 music, as well as sending and receiving email. For the months preceding the April 30, 2010
4 release of the 3G-enabled iPad, Apple and AT&T promoted the availability of an accompanying
5 “unlimited data” service plan, touting it as a material benefit of the 3G-enabled iPad. Apple and
6 AT&T promised consumers flexibility with their data plans, allowing them the ability to freely
7 switch back and forth between the limited data plan, the unlimited data plan, and no 3G data plan,
8 based on their budgets and data needs.

9 3. Defendants’ promotion of the flexible unlimited 3G data plan continued up to, and
10 after, June 2, 2010, when they announced that within 5 days—that is, as of June 7, 2010—they
11 would discontinue providing the unlimited data plan. The iPad purchasers who initially opted for
12 the limited data plan were stripped of their ability to later opt for the unlimited data plan, and
13 even those customers who were signed up for the unlimited data plan can no longer switch to a
14 limited data plan, then later opt for the unlimited plan again, as was originally promised. Apple
15 and AT&T announced this policy change within just weeks after selling at least hundreds of
16 thousands of 3G-enabled iPads upon the product’s initial launch.

17 4. Defendants’ representations induced Plaintiffs and other customers to pay an
18 additional \$130 for the 3G capability. The availability of a flexible unlimited data plan was
19 material to purchasers’ decisions because it allows customers to download video, music and other
20 data-intensive content on their iPads without incurring excessive charges, and also allows them to
21 not pay for unlimited data when they do not need it. Defendants’ ubiquitous marketing of the
22 unlimited data plan and the option for customers to turn such plan on and off based on their data
23 needs, on their respective websites and elsewhere, reflects Defendants’ keen awareness that these
24 promised options were highly important to customers’ purchase decisions.

25 5. Plaintiffs and the Class seek damages, restitution, and injunctive relief for
26 Defendants’ ubiquitous false representations, on their respective websites and elsewhere, that
27 customers who purchase iPads with 3G capability would be able to freely switch in and out of an
28 unlimited 3G data plan each month as their data needs demanded.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because the amount in controversy exceeds \$5,000,000 exclusive of interest and costs, and there is minimal diversity because Plaintiffs and numerous members of the Class are citizens of different states than Defendants.

7. This Court has personal jurisdiction over Defendants because Apple is headquartered in, and is incorporated in, California; a substantial portion of the wrongdoing alleged in this Complaint took place in California; Defendants are authorized to do business in California; Defendants have sufficient minimum contacts with California and/or Defendants otherwise intentionally avail themselves of the markets in California through the promotion, marketing and sale of their products and services in California to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper under 28 U.S.C. § 1391(a) because Apple has its headquarters in this District and is incorporated in this District, and because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

9. **Intra-district Assignment:** Pursuant to Northern District of California Civil Local Rules 3-2 and 3-5, assignment to the San Jose Division of the Northern District of California is appropriate. Defendant Apple Inc. is headquartered in Santa Clara County, and thus a substantial part of the events or omissions which give rise to the claims occurred in Santa Clara County.

PARTIES

10. Plaintiff Adam Weisblatt is a citizen of, and resides in, Fulton, New York.

11. Plaintiff Joe Hanna is a citizen of, and resides in, Moreno Valley, California.

12. Plaintiff David Turk is a citizen of, and resides in, Tacoma, Washington.

13. Defendant Apple Inc. ("Apple") is a California corporation with its headquarters in Cupertino, California.

14. Apple is a multi-national corporation that designs and markets computer software, personal computers, and consumer electronics, including mobile devices such as the iPhone and

1 iPad. By revenue, Apple is the largest mobile device company in the world. Apple markets and
2 sells its products and services directly to its customers in stores and online.

3 15. Defendant AT&T Inc. is a Delaware corporation with its headquarters in Dallas,
4 Texas.

5 16. Defendant AT&T Mobility LLC is a wholly-owned subsidiary of AT&T Inc., with
6 its headquarters in Atlanta, Georgia.

7 17. AT&T Inc. and AT&T Mobility LLC are collectively referred to herein as
8 “AT&T.” Apple and AT&T are collectively referred to herein as “Defendants.”

9 18. AT&T provides telecommunication products and services to consumers,
10 businesses, and other telecommunication service providers under the AT&T brand worldwide.
11 AT&T Mobility LLC began operations in October 2000, and in 2004 acquired AT&T Wireless
12 Services, Inc. Upon AT&T Inc.’s acquisition of BellSouth in 2006, AT&T Mobility became a
13 wholly-owned subsidiary of AT&T Inc. By revenue, AT&T is the largest wireless carrier and is
14 the second largest provider of mobile telephony service in the United States, with over 85.1
15 million wireless customers and more than 150 million total customers.

16 19. Through an agreement with Apple, AT&T is, and at all relevant times has been,
17 the exclusive provider of wireless service for all iPads. On information and belief, Apple receives
18 substantial consideration from AT&T in exchange for allowing AT&T to be the exclusive
19 provider of wireless service for all iPads.

20 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

21 20. Apple first announced the release of the iPad (both the 3G-enabled and non-3G-
22 enabled versions) on or around January 27, 2010, in a video presentation given by its CEO, Steve
23 Jobs, hosted on Apple’s website.

24 21. On or around April 3, 2010, Defendants began selling “WiFi” (not 3G-enabled)
25 iPads.

26 22. On or around April 30, 2010, Defendants began selling 3G-enabled iPads, with
27 exclusive AT&T 3G service. The only difference between WiFi iPads and 3G-enabled iPads is
28 the ability, with the later, to connect to, and download data via, AT&T’s 3G wireless network.

1 The iPads with 3G capability cost customers approximately \$130 more (before tax) than the
2 equivalent iPad models without 3G capability. *See* Exhibit A, attached hereto. Customers were
3 able to pre-order 3G-enabled iPads beginning on approximately March 12, 2010. Apple
4 advertised the “No-contract, 3G service,” telling customers that “[i]n the U.S., 3G service is
5 available from AT&T. You can choose from breakthrough data plans – no long-term contract
6 required.” *See* Exhibit A, attached hereto. AT&T likewise advertised the 3G-capable versions of
7 the iPad, and consumers could follow a link on AT&T’s website to purchase 3G-capable iPads.
8 *See* Exhibit B, attached hereto.

9 23. Since its launch, Defendants have sold well over 2 million iPads. (*See*
10 <http://cbs5.com/local/iPad.Apple.sales.2.1724762.html>). On information and belief, a substantial
11 portion of the iPads that Defendants have sold have been iPads with 3G capability.

12 24. From April 30, 2010 until June 7, 2010, Defendants offered prospective purchasers
13 of the 3G-capable iPads two 3G data plans: (a) 250 MB of data for \$14.99 per month, with
14 additional data available in 250 MB increments for an added charge; or (b) unlimited 3G data for
15 \$29.99 per month. *See* Exhibits A-C, attached hereto.

16 25. Starting with its introduction in January 2010, and continuing until June 7, 2010,
17 Defendants heavily trumpeted the availability of the flexible, no-contract, unlimited 3G data plan
18 in marketing the 3G-enabled iPad to consumers. For example, in his January 27, 2010 video
19 presentation announcing the launch of the iPad, Apple CEO Steve Jobs promised that customers
20 who purchased 3G-enabled iPads would have access to an “awesome,” “no contract” unlimited
21 data plan as a result of a “breakthrough deal with AT&T.” Both Apple and AT&T repeatedly
22 advertised the unlimited 3G data plan option as a key feature of the iPad, on their websites and
23 elsewhere.

24 26. Customers who purchased 3G-capable iPads were not required to chose a single
25 3G data plan to apply to their service for any longer than a one month period. Rather, according
26 to Defendants’ representations, whether or not customers initially signed up for the unlimited data
27 plan, customers would be able to sign up for, and change, their data plans each month as their
28

1 data needs demanded, and, specifically, would be able to “upgrade to” or “switch” in and out of
2 the unlimited data plan on a monthly basis in the future as their data needs demanded.

3 27. From the time they began marketing the 3G-capable iPad until June 7, 2010,
4 Defendants consistently and expressly promised prospective customers that if they purchased a
5 3G-capable iPad, they could later upgrade to the unlimited data plan and could switch in and out
6 of the unlimited data plan as their data needs demanded. For example, Apple advertised to
7 prospective iPad 3G customers:

8 a. **“No-contract 3G service.** In the United States, 3G service is
9 available through a breakthrough deal with AT&T. *You choose the amount of data per month you*
10 *want to buy — 250MB or unlimited.* If you choose the 250MB plan, you’ll receive onscreen
11 messages as you get close to your monthly data limit so *you can decide whether to turn off 3G or*
12 *upgrade to the unlimited plan.* Best of all, there’s no long-term contract. *So if you have a*
13 *business trip or vacation approaching, just sign up for the month you’ll be traveling and cancel*
14 *when you get back.* You don’t need to visit a store to get 3G service. You can sign up, check your
15 data usage, manage your account, or cancel your service — all from your iPad.” Exhibit C,
16 attached hereto (emphasis added).

17 b. **“Manage your data plan.** iPad makes it easy to choose the data
18 plan that works best for you. *When you need more data, you can add another 250MB or upgrade*
19 *to the Unlimited Data plan.* Because you sign up for a data plan in monthly increments, you can
20 cancel your plan at any time and then sign up again whenever you need 3G service.” Exhibit C,
21 attached hereto (emphasis added).

22 c. “[Y]ou can monitor your data usage and change your plan at any
23 time, including switching to unlimited data or cancelling 3G service if you know you won’t need
24 it.” Exhibit A, attached hereto.

25 d. “As you get close to your monthly data limit, you’ll receive
26 onscreen messages to help you decide whether to upgrade to another 250MB or switch to the
27 unlimited plan.” Exhibit A, attached hereto.

28

1 e. “There are two monthly data plans: 250MB or unlimited. There’s
2 no contract, and you can sign up and change your service right on your iPad.” Exhibit A,
3 attached hereto.

4 28. Likewise, AT&T advertised on its website: “AT&T offers two data plan options –
5 250MB or unlimited data, with recurring monthly charge and no long-term contract. To help you
6 manage your data with a 250 MB plan, iPad will notify you at 20%, 10%, and when there’s no
7 more data available, so you can decide if you want to add more data or upgrade to an unlimited
8 data plan.” Exhibit B, attached hereto.

9 29. An unlimited 3G data plan is material to iPad customers because customers can
10 use the iPad to, among other things, download data-intensive applications and content, such as
11 music and full-length movies and other video content, capabilities for which Defendants
12 expressly marketed the iPad to consumers. On information and belief, for example, under a
13 \$14.99 per month, 250 MB plan, a consumer could download a little over 2 hours of video
14 content per month before incurring overage charges, whereas under the \$29.99 per month
15 unlimited data plan, a consumer could finish a 3 hour movie, and download unlimited other
16 movies and content, without incurring any overage charges.

17 30. Having the option to turn the unlimited data plan on and off is material to
18 customers because it allows them access to unlimited data, at a reasonable flat cost, when they
19 need it (such as when they are going on vacation, and want to use their iPads to download full-
20 length movies), while at the same time allowing them to not pay for unlimited data when they do
21 not need it.

22 31. Defendants marketed and advertised the unlimited data plan, and the ability to
23 switch in and out of the unlimited data plan, to induce consumers to purchase iPads with 3G
24 capability. The iPads with 3G capability cost significantly more than the equivalent iPads
25 without 3G capability, but they were seen as worth the added cost by consumers who wanted the
26 flexibility and option of getting unlimited 3G data for a fixed cost when they needed it.

27 32. Defendants’ representations regarding the continued availability of flexible,
28 unlimited data service plans were material to customers’ decisions to purchase iPads with 3G

1 capability, Defendants intended that customers rely on those representations, and Plaintiffs and
2 the Class did rely on those representations in making their purchase decisions.

3 33. Defendants' representations, between January 27, 2010 and June 7, 2010,
4 regarding the continued availability of flexible, unlimited data service plans for purchasers of
5 iPads with 3G capability, were false, and Defendants knew or should have known that those
6 representations were false when they made them. Contrary to their numerous representations,
7 which were designed to induce customers to purchase 3G-enabled iPads and thereby drive up
8 sales and Defendants' profits, Defendants had no intention of providing customers with a flexible
9 unlimited 3G data plan.

10 34. On or around June 2, 2010, Defendants announced, through a press release, that as
11 of June 7, 2010, they would no longer offer an unlimited 3G data plan for iPad customers. *See*
12 Exhibit D, attached hereto. Defendants provided no other notice of this policy change to
13 customers who purchased 3G-capable iPads either before or after the June 2, 2010 press release
14 was issued.

15 35. Pursuant to this change, customers can no longer choose to pay a fixed monthly
16 rate for unlimited 3G data, but rather are required to choose between other, limited data plans.
17 *See* Exhibit D, attached hereto. Many of the applications for which the iPad can be used, and for
18 which Defendants expressly marketed the iPad to customers—such as downloading movies and
19 other video content—would cause customers to significantly exceed the limits of the new limited
20 data plans that are available, thus resulting in overages and corresponding additional charges to
21 customers.

22 36. On information and belief, after June 7, 2010, customers who purchased iPads
23 with 3G capability before June 7, 2010 and who were signed up for an unlimited data plan as of
24 June 7, 2010 can maintain an unlimited plan, however if those customers *ever* discontinue
25 subscribing to the unlimited data plan (*e.g.*, by changing to a different plan or choosing to have no
26 3G plan for a particular month), they cannot switch back to the unlimited data plan. On
27 information and belief, customers who purchased iPads with 3G capability before June 7, 2010
28 and who were signed up for a limited data plan as of June 7, 2010, will *never* have the option to

1 sign up for an unlimited data plan or, for that matter, to switch in and out of the unlimited data
2 plan. With respect to those customers who purchased 3G-enabled iPads before June 7, 2010 but
3 had not signed up for any 3G data plan as of June 7, 2010, there are inconsistent reports as to their
4 options after June 7, 2010. At least some of these customers have been denied by Defendants the
5 ability to *ever* sign up for the unlimited data plan, even as a one-time, non-flexible option, while it
6 appears that some others may have been given a one-time option to sign up for a non-flexible
7 unlimited data plan. In all cases, none of these customers will have the option of switching in and
8 out of the unlimited plan as their data needs demand, as was promised.

9 37. In other words, even though Defendants widely trumpeted to customers the
10 availability of the unlimited 3G data plan and, specifically, that customers would be able to
11 switch in and out of the unlimited data plan in the future as their data needs demanded, at least
12 many of those customers who did not initially sign up for the unlimited data plan will *never* have
13 the option of “switching” or “upgrading” to the unlimited data plan in the future, as was
14 promised, and all such customers have lost the promised ability to switch in and out of the
15 unlimited data plan. Likewise, those customers who did initially sign up for the unlimited data
16 plan have lost the ability to switch in and out of the unlimited data plan, as was promised.

17 38. Defendants unilaterally withdrew the flexible unlimited data plan option just over
18 a month after they started selling iPads with 3G capability. Defendants stripped Plaintiffs and the
19 Class of one of the key promised benefits of purchasing a 3G-capable iPad in some cases just
20 days (and, at most, about a month) after they purchased their iPads in reliance on Defendants’
21 misrepresentations.

22 39. Without the availability of a flexible, no-contract unlimited 3G data plan, the 3G-
23 enabled iPads that Plaintiffs and the Class purchased from Defendants are of significantly reduced
24 value and utility.

25 40. Defendants’ unilateral withdrawal of the unlimited data plan option was timed to
26 occur after Apple’s 14-day return deadline expired for the substantial number of customers,
27 including Plaintiffs, who bought 3G-capable iPads during the initial rush when the product was
28 first launched. *See, e.g.*, <http://news.ycombinator.com/item?id=1397702>.

1 41. Defendants' misrepresentations continued right up to the time they withdrew the
2 unlimited data plan option. As of at least June 5, 2010—three days *after* Defendants announced
3 the June 7, 2010 change and just two days before the change was scheduled to take effect (*see*
4 Exhibit D, attached hereto)—Apple continued to falsely advertise on its website that purchasers
5 of 3G-capable iPads would be able to “upgrade” to the unlimited data plan, and switch in and out
6 of the unlimited data plan, in the future. *See* Exhibit E, attached hereto. As of at least June 5,
7 2010, AT&T also continued to advertise this option despite the pending change that rendered the
8 representation completely false. *See* Exhibit F, attached hereto.

9 42. Even after the June 7, 2010 change took effect, Apple's website continued to
10 misrepresent to customers that the unlimited data plan was available for 3G-capable iPads and
11 that customers would be able to upgrade in the future to the unlimited data plan, and switch in and
12 out of the unlimited data plan, as their data needs demanded. *See* Exhibit G, attached hereto.

13 43. On or around June 4, 2010, apparently in response to concerns raised about how
14 the pending data plan changes would apply in light of the existing back log of iPad orders,
15 Defendants made an announcement reassuring consumers that the unlimited data plan would be
16 available for all customers who ordered 3G-enabled iPads before June 7, 2010, even if they
17 received their iPads after June 7, 2010. During the period between the June 2, 2010
18 announcement of the June 7, 2010 change and the implementation of the June 7, 2010 change,
19 Defendants continued to represent that customers who purchased 3G-enabled iPads would be able
20 to switch in and out of the unlimited 3G data plan based on their monthly data needs. *See, e.g.,*
21 Exhibits E and F, attached hereto. Despite these representations, all customers who ordered iPads
22 before June 7, 2010, but did not receive their iPads until after June 7, 2010, were denied the
23 ability to switch in and out of the unlimited data plan based on their monthly data needs, as was
24 promised. Moreover, on information and belief, Defendants denied many of these customers the
25 right to *initially* sign up for the unlimited data plan, when they received their iPads, even as a one
26 time, non-flexible option.

27 44. By their conduct, Defendants have been unjustly enriched and have damaged
28 Plaintiffs and the Class.

PLAINTIFF ADAM WEISBLATT

45. On April 8, 2010, Plaintiff Adam Weisblatt purchased a 16 GB WiFi (non-3G-capable) iPad for a total purchase price of \$538.92, including tax. On April 30, 2010, Mr. Weisblatt returned that iPad and paid an additional \$140.40 (\$130 plus the additional tax) in exchange for the equivalent 16 GB model iPad with 3G capability. Both his original April 8, 2010 purchase and the April 30, 2010 exchange/purchase were made at an Apple store in Syracuse, New York.

46. Before purchasing his 3G-capable iPad, Mr. Weisblatt saw representations, on Apple's website and in various industry publications (which, on information and belief, were based on Defendants' statements), regarding the iPad with 3G capability, which at the time was scheduled to be released shortly. In particular, Mr. Weisblatt saw representations, including on Apple's website, that: (a) one of the available data plans for the 3G-capable iPad would be unlimited 3G data downloading for a fixed monthly rate; and (b) if he purchased a 3G-capable iPad, he would be able to switch in and out of the unlimited 3G data plan in the future as his monthly data needs demanded.

47. Similarly, on April 30, 2010, the day that Mr. Weisblatt purchased his 3G-capable iPad, customer service representatives at the Apple store where he made the purchase represented to Mr. Weisblatt that if he purchased a 3G-capable iPad: (a) one of his data plan options would be an unlimited 3G data plan for a fixed monthly rate; and (b) he would be able to switch in and out of the unlimited 3G data plan in the future as his monthly data needs demanded.

48. Based on these representations, Mr. Weisblatt decided to exchange his WiFi (non-3G-capable) iPad and pay an extra \$140.40 (with tax) for a 3G-capable iPad. Mr. Weisblatt decided that the 3G-capable iPad was worth the additional cost because, in some months, unlimited 3G data access would allow him to work outside of the office for several hours a week that he otherwise would have to spend in the office, and allow him access to data-intensive content when he is away from home.

49. On May 2, 2010, two days after he purchased his 3G-enabled iPad, Mr. Weisblatt signed up for the unlimited 3G data plan, and he was signed up for the unlimited data plan as of

1 June 7, 2010. However, due to variances in his work and life schedules, there are several months
2 each year where an unlimited 3G data plan would not benefit Mr. Weisblatt. Thus, Mr. Weisblatt
3 anticipated using the unlimited data plan in some months and not in others. The appeal to Mr.
4 Weisblatt of the 3G-capable iPad was that, according to Defendants' representations, unlimited
5 3G data would be available to him for the months that he needed it, but he was not required to pay
6 for unlimited data in the months that he did not need it.

7 50. As a result of Defendants' June 7, 2010 policy change, Mr. Weisblatt no longer
8 has the option to switch in and out of the unlimited 3G data plan, as he was promised.

9 51. Had he known that his access to the unlimited 3G data plan option would be
10 restricted in the way it has been pursuant to the June 7, 2010 change (*i.e.*, that he would not be
11 allowed to switch in and out of the unlimited data plan based on his needs), Mr. Weisblatt would
12 not have purchased the iPad with 3G capability.

13 52. Mr. Weisblatt has been, and will continue to be, injured as a result of Defendants'
14 conduct alleged herein, in that, *inter alia*, he paid more than he otherwise would have for his iPad
15 and/or related services, has been denied important benefits that he was promised by Defendants
16 and that he paid for, and will be assessed excessive charges for downloading data to his iPad.

17 **PLAINTIFF JOE HANNA**

18 53. On April 30, 2010, Plaintiff Joe Hanna purchased a 64 GB 3G-enabled iPad at a
19 Best Buy store in Moreno Valley, California. The total purchase price for his iPad was \$829.00
20 plus sales tax.

21 54. Before he made his April 30, 2010 iPad purchase, Mr. Hanna researched both the
22 3G-enabled and WiFi versions of the iPad on Apple's website. Mr. Hanna saw representations,
23 including on Apple's website, that: (a) one of the available data plans for the 3G-capable iPad
24 would be unlimited 3G data downloading for a fixed monthly rate; and (b) if he purchased a 3G-
25 capable iPad, he would be able to switch in and out of the unlimited 3G data plan in the future as
26 his monthly data needs demanded.

27 55. Based on these representations, Mr. Hanna decided to purchase a 3G-enabled iPad
28 instead of a WiFi iPad. Mr. Hanna decided that the 3G-capable iPad was worth the additional

1 cost because he wanted to be able to use his iPad to download videos and other data-intensive
2 content during certain times when he would be away from home and not near a WiFi “hot spot,”
3 and he understood that a flexible, no contract unlimited 3G data plan would allow him to do so.

4 56. Mr. Hanna has not purchased a 3G data plan since he purchased his 3G-enabled
5 iPad on April 30, 2010. He has not needed to purchase a 3G data plan during this time because
6 he has generally been either home or in another place where he has WiFi access. However, when
7 he purchased his iPad, Mr. Hanna planned to sign up for the unlimited 3G data plan in certain
8 months when he is on vacation or otherwise away from home or WiFi access, and then turn off
9 the unlimited data plan when he did not need it. Thus, Mr. Hanna anticipated using the unlimited
10 data plan in some months and not in others. The appeal to Mr. Hanna of the 3G-capable iPad,
11 and the reason why he bought the 3G-capable iPad, was that, according to Defendants’
12 representations, unlimited 3G data would be available to him for the months that he needed it, but
13 he was not required to pay for unlimited 3G data (or any 3G data plan, for that matter) in the
14 months that he did not need it.

15 57. As a result of Defendants’ June 7, 2010 policy change, Mr. Hanna will never have
16 the option of signing up for the unlimited 3G data plan or the option to switch in and out of the
17 unlimited 3G data plan as his data needs demand, as he was promised.

18 58. Had he known the truth about his data plan options, Mr. Hanna would not have
19 purchased the iPad with 3G capability.

20 59. Mr. Hanna has been, and will continue to be, injured as a result of Defendants’
21 conduct alleged herein, in that, *inter alia*, he paid more than he otherwise would have for his iPad
22 and/or related services, has been denied important benefits that he was promised by Defendants
23 and that he paid for, and will be assessed excessive charges for downloading data to his iPad.

24 **PLAINTIFF DAVID TURK**

25 60. On April 30, 2010, Plaintiff David Turk purchased two 3G-enabled iPads (for him
26 and his wife) at an Apple Store in Tukwila, Washington, one a 16 GB model and the other a 64
27 GB model. The total purchase price for these two iPads was \$1,458.00 plus sales tax.

28

1 61. On May 18, 2010, Mr. Turk purchased a third 3G-enabled iPad, a 32 GB model,
2 for his daughter. Mr. Turk ordered this third iPad through Apple's online store. The total
3 purchase price for this iPad was \$796.80 (\$729.00 plus tax). He received this iPad on
4 approximately June 5, 2010.

5 62. Before he purchased his three 3G-enabled iPads, Mr. Turk researched the 3G-
6 enabled iPad on Apple's website. Mr. Turk saw representations, including on Apple's website,
7 that: (a) one of the available data plans for the 3G-capable iPad would be unlimited 3G data
8 downloading for a fixed monthly rate; and (b) if he purchased a 3G-capable iPad, he would be
9 able to switch in and out of the unlimited 3G data plan in the future (including upgrading to the
10 unlimited data plan mid-month in any given month) as his data needs demanded.

11 63. Based on these representations, Mr. Turk decided to purchase the three 3G-enabled
12 iPads.

13 64. For one of the two 3G-enabled iPads that he purchased on April 30, 2010, Mr.
14 Turk signed up for the unlimited 3G data plan on April 30, 2010, and, for that iPad, he was signed
15 up for the unlimited 3G data plan as of June 7, 2010. For the other 3G-enabled iPad that he
16 purchased on April 30, 2010, Mr. Turk initially signed up for the limited 250MB 3G data plan on
17 May 4, 2010. He upgraded to the unlimited data plan shortly thereafter, and, for that iPad, he was
18 signed up for the unlimited 3G data plan as of June 7, 2010. When he purchased these two iPads
19 on April 30, 2010, Mr. Turk anticipated that, for each iPad, he would sign up for the unlimited
20 data plan in some months and not in others, based on his and his wife's changing 3G data needs.
21 The appeal to Mr. Turk of the 3G-capable iPad was that, according to Defendants'
22 representations, unlimited 3G data would be available to him and his wife for the months that
23 they needed it, but he was not required to pay for unlimited data in the months that they did not
24 need it.

25 65. As a result of Defendants' June 7, 2010 policy change, with respect to both of the
26 3G-enabled iPads that he purchased on April 30, 2010, Mr. Turk no longer has the option to
27 switch in and out of the unlimited 3G data plan, as he was promised.
28

66. For the 3G-enabled iPad that Mr. Turk purchased for his daughter, and which he received on June 5, 2010, his daughter attempted to sign up for the unlimited 3G data plan on June 15, 2010, however she was not allowed to do so at that time. On June 20, 2010, Mr. Turk and his daughter were able to sign up for the unlimited 3G data plan for this iPad. Mr. Turk and his daughter would have instead signed up for a limited 3G data plan for this iPad at that time, based on their expected data needs that month, but they signed up for the unlimited 3G data plan because, as a result of Defendants' June 7, 2010 policy change, they believed this was their only chance to ever sign up for an unlimited 3G data plan, albeit without the option to switch in and out of the unlimited data plan based on their data needs, an option they were promised and which they had intended to take advantage of.

67. As a result of Defendants' June 7, 2010 policy change, with respect to the 3G-enabled iPad that Mr. Turk purchased for his daughter, Mr. Turk and his daughter will not have the option to switch in and out of the unlimited 3G data plan based on their data needs, as was promised.

68. Had he known the truth about the 3G data plan options, Mr. Turk would not have purchased the three iPads with 3G capability.

69. Mr. Turk has been, and will continue to be, injured as a result of Defendants' conduct alleged herein, in that, *inter alia*, he paid more than he otherwise would have for his iPads and/or related services, has been denied important benefits that he was promised by Defendants and that he paid for, and will be assessed excessive charges for downloading data to his iPads.

CLASS ACTION ALLEGATIONS

70. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as members of a proposed nationwide class (the "Class") initially defined as:

All persons in the United States who purchased or ordered an Apple iPad with 3G capability on or before June 6, 2010.

Excluded from this Class is any person, firm, trust, corporation, or other entity related to or affiliated with Apple Inc., AT&T Inc., and AT&T Mobility LLC.

1 71. This action is brought and may properly be maintained as a class action pursuant
2 to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). This action satisfies the
3 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of
4 these provisions.

5 72. Typicality Under Rule 23(a)(1). The Class is so numerous that the individual
6 joinder of all members is impracticable. While the Class's exact number and the identity of Class
7 members is currently unknown and can only be ascertained through appropriate discovery,
8 Plaintiffs are informed and believes that the Class includes at least tens of thousands of
9 individuals, if not many more.

10 73. Commonality Under Rule 23(a)(2). Common legal and factual questions exist that
11 predominate over any questions affecting only individual Class members. These common
12 questions, which do not vary from Class member to Class member, and which may be determined
13 without reference to any Class member's individual circumstances, include, but are not limited to
14 whether:

15 a. The offer of an unlimited data plan and/or the ability to switch in
16 and out of an unlimited data plan are material facts that reasonable purchasers would have
17 considered important in making their purchase decisions;

18 b. Defendants engaged in unfair, false, misleading, or deceptive acts
19 or practices regarding its marketing and sale of 3G-capable iPads, in violation of the UCL;

20 c. Defendants represented, through their words and conduct, that their
21 iPads with 3G capability had characteristics, uses, or benefits they did not actually have, in
22 violation of the CLRA;

23 d. Defendants advertised the 3G-capable iPads with the intent not to
24 sell them as advertised, in violation of the CLRA;

25 e. Defendants' conduct regarding the marketing and sale of its 3G
26 iPads was likely to mislead or deceive, and is therefore fraudulent, within the meaning of the
27 UCL;

28

1 f. Defendants' conduct alleged herein constitutes false advertising in
2 violation of Cal. Bus. & Prof. Code §§ 17500, *et seq.*;

3 g. Defendants' conduct alleged herein constitutes fraud and/or
4 intentional misrepresentation;

5 h. Defendants' conduct alleged herein constitutes negligent
6 misrepresentation;

7 i. Defendants have been unjustly enriched by their conduct alleged
8 herein;

9 j. Plaintiffs and the Class are entitled to injunctive and/or other
10 equitable relief, including restitution and disgorgement, and if so, the nature and amount of such
11 relief;

12 k. Defendants are liable for actual and/or compensatory damages, and,
13 if so, the amount of such damages;

14 l. Defendants are liable for punitive damages, and if so, the amount of
15 such damages.

16 74. Typicality Under Rule 23(a)(3). Plaintiffs' claims are typical of the Class
17 members' claims. Defendants' common course of conduct caused Plaintiffs and all Class
18 members the same damages. In particular, Defendants' conduct caused each Class member's
19 economic losses. Likewise, Plaintiffs and other Class members must prove the same facts in
20 order to establish the same claims.

21 75. Adequacy of Representation Under Rule 23(a)(4). Plaintiffs are adequate Class
22 representatives because they are Class members and their interests do not conflict with Class
23 interests. Plaintiffs retained counsel competent and experienced in consumer protection class
24 actions, and together Plaintiffs and counsel intend to prosecute this action vigorously for the
25 Class's benefit. Plaintiffs and their counsel will fairly and adequately protect Class interests.

26 76. The Class can be properly maintained under Rule 23(b)(2). Defendants have acted
27 or refused to act, with respect to some or all issues presented in this Complaint, on grounds
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generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

77. The Class can be properly maintained under Rule 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual litigation of each Class member's claim is impracticable. Even if each Class member could afford individual litigation, the court system could not. It would be unduly burdensome if thousands of individual cases proceed. Likewise, individual litigation presents a potential for inconsistent or contradictory judgments, the prospect of a race for the courthouse, as well as the risk of an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation further increases the expense and delay to all parties and the courts because it requires individual resolution of common legal and factual questions. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

FIRST CAUSE OF ACTION **(Intentional Misrepresentation)**

78. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

79. As alleged herein, in the course of conducting their business of selling iPads and related services, Defendants have intentionally made numerous material misrepresentations of fact to Plaintiffs and all members of the Class concerning the benefits of purchasing an iPad with 3G capability and the nature of customers' unlimited 3G data plan options.

80. Defendants intentionally failed to disclose material information regarding the nature of 3G data plan options to Plaintiffs and the Class.

81. Defendants' misrepresentations alleged herein were the type of misrepresentations that are material—*i.e.*, a reasonable person would attach importance to them and would be induced to act on the information in making purchase decisions.

1 82. Defendants knew that the misrepresentations alleged herein were false at the time
2 they made them and/or acted recklessly in making such misrepresentations.

3 83. In making the misrepresentations alleged herein, Defendants intended that
4 Plaintiffs and the Class would rely on such misrepresentations and purchase iPads with 3G
5 capability.

6 84. Defendants' misrepresentations alleged herein are objectively material to the
7 reasonable consumer, and therefore reliance upon such misrepresentations may be presumed as a
8 matter of law.

9 85. Plaintiffs and the Class reasonably and justifiably relied to their detriment on
10 Defendants' intentional misrepresentations.

11 86. Defendants' intentional misrepresentations were a substantial factor in causing
12 Plaintiffs and the Class to purchase iPads with 3G capability from Defendants.

13 87. As a proximate result of Defendants' intentional misrepresentations, Plaintiffs and
14 each member of the Class suffered damages in an amount to be proven at trial.

15 88. Defendants directly benefited from, and were unjustly enriched by, their
16 intentional misrepresentations.

17 89. Defendants acted with "malice," as that term is defined in Cal. Civ. Code §
18 3294(c)(1), by engaging in the conduct alleged herein, which was specifically intended by
19 Defendants to cause substantial injury to Plaintiffs and the members of the Class.

20 90. Defendants' conduct alleged herein constitutes "fraud," as that term is defined in
21 Cal. Civ. Code 3294(c)(3), because such conduct involved intentional misrepresentations, deceit,
22 and/or concealment of material facts known to Defendants, and was done with the intent to cause
23 injury to their customers.

24 91. Plaintiffs and the Class are entitled to actual and punitive damages and attorneys'
25 fees under Cal. Civ. Code § 3294(a).

26 92. As a proximate result of Defendants' intentional misrepresentations, Plaintiffs and
27 each member of the Class suffered an ascertainable loss and are entitled to equitable relief and
28 compensatory and punitive damages, in amounts to be proven at trial.

SECOND CAUSE OF ACTION
(False Promise/Fraud)

93. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

94. Defendants made false promises to Plaintiffs and all members of the Class regarding the benefits of purchasing iPads with 3G capability and the nature of customers' unlimited 3G data plan options.

95. Defendants made such false promises for the purpose of inducing Plaintiffs and the Class to purchase iPads with 3G capability.

96. The false promises alleged herein were the type of promises considered to be material, *i.e.*, a reasonable person would attach importance to them and would be induced to act on the information in making purchase decisions.

97. Defendants made such false promises with the knowledge that they would not fulfill them and with the intention of not fulfilling them.

98. The false promises alleged herein are objectively material to the reasonable consumer, and therefore reliance upon such promises may be presumed as a matter of law.

99. Plaintiffs and the Class reasonably and justifiably relied to their detriment on Defendants' false promises.

100. Defendants' false promises were a substantial factor in causing Plaintiffs and the Class to purchase iPads with 3G capability from Defendants.

101. As a proximate result of Defendants' false promises, Plaintiffs and each member of the Class suffered damages in an amount to be proven at trial.

102. Defendants directly benefited from, and were unjustly enriched by, having made the false promises alleged herein.

103. Defendants acted with "malice," as that term is defined in Cal. Civ. Code § 3294(c)(1), by engaging in the conduct alleged herein, which was specifically intended by Defendants to cause substantial injury to Plaintiffs and the members of the Class.

104. Defendants' conduct alleged herein constitutes "fraud," as that term is defined in Cal. Civ. Code 3294(c)(3), because such conduct involved Defendants making material promises, which Defendants knew to be false, with the intent to cause injury to their customers.

105. Plaintiffs and the Class are entitled to actual and punitive damages and attorneys' fees under Cal. Civ. Code § 3294(a).

106. As a proximate result of Defendants' false promises, Plaintiffs and each member of the Class suffered an ascertainable loss and are entitled to equitable relief and compensatory and punitive damages, in amounts to be proven at trial.

THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

107. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

108. As alleged herein, in the course of conducting their business of selling iPads and related services, Defendants have made numerous material misrepresentations of fact to Plaintiffs and all members of the Class concerning the benefits of purchasing an iPad with 3G capability and the nature of customers' unlimited 3G data plan options.

109. Defendants failed to disclose material information regarding the nature of 3G data plan options to Plaintiffs and the Class.

110. Defendants' misrepresentations alleged herein were supplied to customers for the purpose of affecting their purchase decisions.

111. Defendants had no reasonable grounds for believing that their misrepresentations were true.

112. Defendants failed to exercise reasonable care and/or diligence in communicating their misrepresentations to customers and failing to disclose material information to customers.

113. Defendants' misrepresentations alleged herein were the type of misrepresentations that are material—*i.e.*, a reasonable person would attach importance to them and would be induced to act on the information in making purchase decisions.

114. Defendants' misrepresentations alleged herein are objectively material to the reasonable consumer, and therefore reliance upon such misrepresentations may be presumed as a matter of law.

115. Plaintiffs and the Class reasonably and justifiably relied to their detriment on Defendants' misrepresentations.

116. Defendants' misrepresentations were a substantial factor in causing Plaintiffs and the Class to purchase iPads with 3G capability from Defendants.

117. As a proximate result of Defendants' misrepresentations, Plaintiffs and each member of the Class suffered damages in an amount to be proven at trial.

118. Defendants directly benefited from, and were unjustly enriched by, their misrepresentations.

FOURTH CAUSE OF ACTION

(Violation of Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*)

119. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

120. Defendants are "persons" as defined in Cal. Civil Code § 1761(c).

121. Plaintiffs and the Class members are "consumers" as defined in Cal. Civil Code § 1761(d).

122. The iPads that Plaintiffs and the Class purchased from Defendants are "goods" and/or "services" within the meaning of Cal. Civil Code § 1761(a), (b).

123. The 3G wireless services that Plaintiffs and the Class purchased from Defendants are "goods" and/or "services" within the meaning of Cal. Civil Code § 1761(a), (b).

124. The purchases by Plaintiffs and the Class of the goods and services sold by Defendants, alleged herein, constitute "transactions" within the meaning of Cal. Civ. Code §§ 1761(e) and 1770.

125. In connection with their sale of goods and services to Plaintiffs and the Class, Defendants violated the Consumer Legal Remedies Act ("CLRA") in at least the following ways:

1 a. Misrepresenting to Plaintiffs and the Class that they would be able
2 to subscribe to, and switch in and out of, the unlimited data plan in the future as their monthly
3 data needs demanded, whether or not they initially signed up for the unlimited data plan, in
4 violation of Cal. Civ. Code §§ 1770(a)(5), (9), (14), and (16);

5 b. Misrepresenting to Plaintiffs and the Class that Defendants' goods
6 and services had characteristics and benefits they did not have, in violation of Cal. Civ. Code §
7 1770(a)(5);

8 c. Misrepresenting to Plaintiffs and the Class that the subject of a
9 transaction has been supplied in accordance with a previous representation when it has not, in
10 violation of Cal. Civ. Code § 1770(a)(16);

11 d. Misrepresenting that their transactions with Plaintiffs and the Class
12 conferred benefits and rights on Plaintiffs and the Class, and obligations on Defendants, which
13 were not, in fact, conferred, in violation of Cal. Civ. Code § 1770(a)(14); and

14 e. Advertising goods and services to Plaintiffs and the Class with the
15 intent not to sell them as advertised, in violation of Cal. Civ. Code § 1770(a)(9).

16 126. In addition, under California law, a duty to disclose arises in four circumstances:
17 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had
18 exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively
19 conceals a material fact from the plaintiff; and (4) when the defendant makes partial
20 representations but also suppresses some material facts.

21 127. Defendants had a duty to disclose to Plaintiffs and the Class the true nature of the
22 unlimited data plan options because: (a) Defendants had exclusive knowledge of the information
23 at the time of sale; (b) Defendants actively concealed from Plaintiffs and the Class the true nature
24 of the unlimited data plan options, which was material information to customers; and (c)
25 Defendants made partial representations to Plaintiffs and the Class regarding the nature of the
26 unlimited data plan options.

1 128. Defendants violated the CLRA by concealing material information from Plaintiffs
2 and the Class regarding the true nature of the unlimited data plan options when they had a duty to
3 disclose that information.

4 129. Defendants' misrepresentations and omissions in violation of the CLRA were
5 likely to mislead consumers. Plaintiffs and the Class reasonably interpreted Defendants'
6 representations and omissions to mean that they would be able to subscribe to, and switch in and
7 out of, the unlimited data plan in the future as their monthly data needs demanded, whether or not
8 they initially signed up for the unlimited data plan.

9 130. Defendants' conduct alleged herein was intentional and was specifically designed
10 to induce customers to purchase iPads with 3G capability.

11 131. Defendants' misrepresentations and omissions alleged herein were material in that
12 a reasonable person would attach importance to such information and would be induced to act
13 upon such information in making purchase decisions.

14 132. Plaintiffs and the Class relied to their detriment on Defendants' misrepresentations
15 and omissions in purchasing their iPads with 3G capability.

16 133. Plaintiffs, on behalf of themselves and the Class, demand judgment against
17 Defendants under the CLRA for injunctive relief and restitution to Plaintiffs and the Class in an
18 amount to be proven at trial.

19 134. Plaintiffs, on behalf of themselves and the Class, further intend to seek
20 compensatory damages and, in light of Defendants' intentional and fraudulent conduct, an award
21 of punitive damages.

22 135. Pursuant to Cal. Civ. Code § 1782(a), Plaintiffs will serve Defendants with notice
23 of their alleged violations of the CLRA by certified mail return receipt requested. If, within thirty
24 days after the date of such notification, Defendants fail to provide appropriate relief for their
25 violation of the CLRA, Plaintiffs will amend this Complaint to seek monetary (both
26 compensatory and punitive) damages under the CLRA.

136. Notwithstanding any other statements in this Complaint, Plaintiffs do not seek monetary damages in conjunction with his CLRA claim, and will not do so, until this thirty-day period has passed.

FIFTH CAUSE OF ACTION
(Violation of Cal. Bus. & Prof. Code Section 17200, *et seq.*—Unlawful, Fraudulent, and Unfair Business Acts and Practices)

137. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

138. Defendants' conduct alleged herein constitutes unfair and deceptive business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.* Such conduct includes, but is not limited to, (a) misrepresenting to Plaintiffs and the Class that they would be able to subscribe to, and switch in and out of, the unlimited data plan in the future as their monthly data needs demanded, whether or not they initially signed up for the unlimited data plan; (b) concealing the true nature of the unlimited data plan options from Plaintiffs and the Class; and (c) denying Plaintiffs and the Class the promised benefit of the continuing option to switch in and out of the unlimited data plan and unilaterally imposing upon Plaintiffs and the Class a choice between less advantageous data plan options.

139. In addition, the conduct alleged herein constitutes fraud, intentional misrepresentation, negligent misrepresentation, unjust enrichment, and violations of the CLRA, thus providing the basis for a finding of liability under the "unlawful" prong of Cal. Bus. & Prof. Code §§ 17200 *et seq.*

140. Defendants' unfair, unlawful, and deceptive acts and practices alleged herein were specifically designed to induce Plaintiffs and the Class to purchase iPads with 3G capability.

141. Defendants' unfair, unlawful, and deceptive acts and practices alleged herein have deceived and/or are likely to deceive Plaintiffs and other reasonable consumers.

142. Defendants' misrepresentations and omissions alleged herein were material in that a reasonable person would attach importance to such information and would be induced to act upon such information in making purchase decisions.

143. Defendants' misrepresentations and omissions alleged herein are objectively material to the reasonable consumer, and therefore reliance upon such misrepresentations may be presumed as a matter of law.

144. Plaintiffs and the Class relied to their detriment on Defendants' misrepresentations and omissions in purchasing their 3G-capable iPads from Defendants.

145. Plaintiffs and each member of the Class have been damaged as a result of Defendants' unfair, unlawful, and deceptive conduct alleged herein. They are entitled to injunctive relief and restitution, in an amount to be proven at trial.

SIXTH CAUSE OF ACTION
(Violation of Cal. Bus. & Prof. Code Section 17500, *et seq.*—False Advertising)

146. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

147. Defendants have committed acts of untrue and misleading advertising, as defined by Cal. Bus. & Prof Code §§ 17500, *et. seq.*, by, *inter alia*: (a) falsely advertising, on their respective websites and elsewhere, that customers who purchased the iPad with 3G capability would be able to subscribe to, and switch in and out of, the unlimited data plan in the future as their monthly data needs demanded, whether or not they initially signed up for the unlimited data plan; and (b) concealing material information about the unlimited 3G data plan options from consumers.

148. Defendants' misrepresentations and omissions alleged herein deceive or have the tendency to deceive the general public regarding the benefits of purchasing a 3G-capable iPad and the nature of the unlimited data plan options.

149. Defendants' misrepresentations and omissions alleged herein were the type of misrepresentations that are material—*i.e.*, a reasonable person would attach importance to them and would be induced to act on the information in making purchase decisions.

150. Defendants' misrepresentations and omissions alleged herein are objectively material to the reasonable consumer, and therefore reliance upon such misrepresentations may be presumed as a matter of law.

151. Defendants' false advertising continued right up until, and in fact after, the end of the Class period.

152. Unless restrained by this Court, Defendants could continue to engage in untrue and misleading advertising, as alleged above, in violation of Cal. Bus. & Prof Code §§ 17500, *et. seq.*

153. As a result of the foregoing, Plaintiffs and each member of the Class have been injured and have lost money or property, and are entitled to restitution and injunctive relief.

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

154. Plaintiffs, individually and on behalf of the Class, incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint.

155. As alleged herein, Defendants intentionally and/or recklessly made false representations to Plaintiffs and the Class to induce them to purchase iPads with 3G capability. Plaintiffs and the Class have reasonably relied on these false representations in purchasing iPads with 3G capability.

156. As alleged herein, Defendants made false promises to Plaintiffs and the Class which Defendants did not intend to keep, and which Defendants did not keep, to induce Plaintiffs and the Class to purchase iPads with 3G capability. Plaintiffs and the Class have reasonably relied on these false promises in purchasing iPads with 3G capability.

157. As alleged herein, Plaintiffs and the Class did not receive all of the benefits that they were promised by Defendants, and paid more to Defendants for their products and services than they otherwise would have paid, and will continue to do so.

158. It would be inequitable and unconscionable for Defendants to retain the profits, benefits, and other compensation they obtained from their deceptive, misleading, and unlawful conduct alleged herein.

159. Plaintiffs and the Class are entitled to restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all profits, benefits, and other compensation obtained by Defendants from their deceptive, misleading, and unlawful conduct alleged herein.

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves and the Class, request that the Court order the following relief and enter judgment against Defendants as follows:

- a. An Order certifying the proposed Class and appointing Plaintiffs and their counsel to represent the Class;
- b. An Order that Defendants be permanently enjoined from its improper activities and conduct described herein;
- c. A judgment awarding Plaintiffs and the Class actual and compensatory damages in an amount according to proof;
- d. A judgment awarding Plaintiffs and the Class restitution in an amount according to proof, including without limitation, restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all profits, benefits, and other compensation obtained by Defendants from their deceptive, misleading, and unlawful conduct alleged herein;
- e. A judgment awarding Plaintiffs and the Class punitive damages;
- f. Pre-judgment and post-judgment interest;
- g. Attorneys' fees and expenses and the costs of this action; and
- h. All other and further relief as the Court deems necessary, just and proper.

JURY DEMAND


Plaintiffs hereby demands a trial by jury.

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Dated: June 23, 2010

Respectfully submitted,

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

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